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| 10/550,239 | 09/23/2005 | Alexander W. M. Bailey | 080422-000000US | 2209 |
| 20350 7590 01/26/2009 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834 | | | | |
| EXAMINER | | | | |
| TRAN, HANH VAN | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 3637 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/550,239

Applicant(s)

BAILEY, ALEXANDER W. M.

Examiner

HANH V. TRAN

Art Unit

3637

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2 and 4-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2, 4-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 7/7/08

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/19/2008 has been entered.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 2, 9-14, 16-18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over PCT/AU85/00159 to Dash in view of USP 1,360,720 to Brown et al.

Dash discloses a metal pallet comprising a top deck 40, a bottom deck 21, at least two elongate bearers 13 securing said decks together, each bearer having a first portion and a second portion (wherein the first and second portions are defined as the

left and right hand sides of the bearer 13 in the assembled configuration such as shown in Fig 4), each portion extends between the decks and has a top web 35 and a bottom web 35 connected to a central web 32 by inclined portions 33-34, wherein at least one edge includes, such as shown in Fig 1, a cover plate, a stiffener and an end cap, wherein each said top and bottom deck is of a profiled configuration, wherein said profiled configuration are corrugations. The differences being that Dash fails to clearly disclose each bearer has a first and a second longitudinally extending bearer portions, with each portion being secured to said decks and extending separately transversely between said decks and wherein each portion has a longitudinally extending top web secured to the top deck, a longitudinally extending bottom web secured to the bottom deck, a longitudinally extending central web extending generally normal to said decks, and longitudinally extending inclined web portions securing the central web to the top and bottom webs, each inclined web portion being inclined to the decks by an acute angle, the central webs are releasably securable together.

Brown et al teaches the idea of providing a supporting bar/bearer comprising, such as shown in Figs 1 and 4, a first and a second longitudinally extending bearer portion (1,2), with each portion being secured to upper and lower decks (3,4) and extending separately transversely between said decks and wherein each portion has a longitudinally extending top web secured to the top deck 3, a longitudinally extending bottom web secured to the bottom deck 4, a longitudinally extending central web 5 extending generally normal to said decks and releasably securable together, and longitudinally extending inclined web portions securing the central web to the top and

bottom webs, each inclined web portion being inclined to the decks by an acute angle; wherein the bar's structure provides a strong, yet lightweight supporting bar. Therefore, it would have been obvious to modify each bearer of Dash by having the bearer comprising a first and a second longitudinally extending bearer portions with each portion being secured to upper and lower decks and extending separately transversely between said decks and wherein each portion has a longitudinally extending top web secured to the top deck, a longitudinally extending bottom web secured to the bottom deck, a longitudinally extending central web extending generally normal to said decks and releasably securable together, and longitudinally extending inclined web portions securing the central web to the top and bottom webs, each inclined web portion being inclined to the decks by an acute angle in order to provide a strong, yet lightweight supporting bar, as taught by Brown et al, since both teach alternate conventional supporting bar structure, used for the same intended purpose of load-supported, thereby providing structure as claimed.

5. Claims 4-8, and 15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Dash, as modified, as applied to claim 18 above, and further in view of USP 4,240,360 to Sanders et al.

Dash, as modified, discloses all the elements as discussed above except for the webs are releasably securable to the decks by fastening means of threaded fasteners or rivets, and a sheet material secured to at least one of said decks.

Sanders teaches the idea of using releasable fastening means of rivets or removable clips for securing elements of a metal; wherein the releasable fastening

means allows the pallet to knock-down for spaced saving purpose. Therefore, it would have been obvious to modify the structure of Dash, as modified, by providing releasable fastening means of threaded fasteners or rivets in order to allow the pallet to knock-down for spaced saving purpose, as taught by Sanders et al, since both teach alternate conventional pallet structure, used for the same intended purpose, thereby providing structure as claimed. In regard to a sheet secured to at least one of said decks, the examiner takes the position that it would have been obvious and well within the level of one skill in the art to provide at least one of the decks with a sheet secured thereto in order to provide a flat supporting deck, when so is desired. Further, it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art.

6. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over PCT/AU85/00159 to Dash in view of USP 1,360,720 to Brown et al and USP 4,240,360 to Sanders et al.

Dash discloses a metal pallet comprising a top deck 40, a bottom deck 21, at least two elongate bearers 13 securing said decks together, each bearer having a first portion and a second portion (wherein the first and second portions are defined as the left and right hand sides of the bearer 13 in the assembled configuration such as shown in Fig 4), each portion extends between the decks and has a top web 35 and a bottom web 35 connected to a central web 32 by inclined portions 33-34, wherein at least one edge includes, such as shown in Fig 1, a cover plate, a stiffener and an end cap, wherein each said top and bottom deck is of a profiled configuration, wherein said

profiled configuration are corrugations. The differences being that Dash fails to clearly disclose each bearer has a first and a second longitudinally extending bearer portions, with each portion being secured to said decks and extending separately transversely between said decks and wherein each portion has a longitudinally extending top web secured to the top deck, a longitudinally extending bottom web secured to the bottom deck, a longitudinally extending central web extending generally normal to said decks, and longitudinally extending inclined web portions securing the central web to the top and bottom webs, each inclined web portion being inclined to the decks by an acute angle, the central webs are releasably securable together, and the webs are releasably securable to the decks by fastening means of threaded fasteners or rivets, and a sheet material secured to at least one of said decks.

Brown et al teaches the idea of providing a supporting bar/bearer comprising, such as shown in Figs 1 and 4, a first and a second longitudinally extending bearer portion (1,2), with each portion being secured to upper and lower decks (3,4) and extending separately transversely between said decks and wherein each portion has a longitudinally extending top web secured to the top deck 3, a longitudinally extending bottom web secured to the bottom deck 4, a longitudinally extending central web 5 extending generally normal to said decks and releasably securable together, and longitudinally extending inclined web portions securing the central web to the top and bottom webs, each inclined web portion being inclined to the decks by an acute angle; wherein the bar's structure provides a strong, yet lightweight supporting bar. Therefore, it would have been obvious to modify each bearer of Dash by having the bearer

comprising a first and a second longitudinally extending bearer portions with each portion being secured to upper and lower decks and extending separately transversely between said decks and wherein each portion has a longitudinally extending top web secured to the top deck, a longitudinally extending bottom web secured to the bottom deck, a longitudinally extending central web extending generally normal to said decks and releasably securable together, and longitudinally extending inclined web portions securing the central web to the top and bottom webs, each inclined web portion being inclined to the decks by an acute angle in order to provide a strong, yet lightweight supporting bar, as taught by Brown et al, since both teach alternate conventional supporting bar structure, used for the same intended purpose of load-supported, thereby providing structure as claimed. Further, Sanders teaches the idea of using releasable fastening means of rivets or removable clips for securing elements of a metal; wherein the releasable fastening means allows the pallet to knock-down for spaced saving purpose. Therefore, it would have been obvious to modify the structure of Dash, as modified, by providing releasable fastening means of threaded fasteners or rivets in order to allow the pallet to knock-down for spaced saving purpose, as taught by Sanders et al, since both teach alternate conventional pallet structure, used for the same intended purpose, thereby providing structure as claimed. In regard to a sheet secured to at least one of said decks, the examiner takes the position that it would have been obvious and well within the level of one skill in the art to provide at least one of the decks with a sheet secured thereto in order to provide a flat supporting deck, when so is

desired. Further, it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art.

Response to Arguments

7. Applicant's arguments filed 12/19/2008 have been fully considered but they are not persuasive. In response to applicant's argument on page 6 that one skill in the pallet art would not consider a spar for an aircraft or any part of an aircraft when designing pallet, the examiner respectfully takes the position that it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both are drawn to a load supporting panel construction having reinforcement/bearer portions between two spaced apart panels/decks.

8. In response to applicant's argument on page 6 and 7 that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine the references is to provide a strong, yet lightweight supporting bar/bearer portion.

9. In response to applicant's argument on pages 7-8 that the use of releasably securable components as required by claim 2 of the present invention would compromise the structural requirements of the spar in Brown, the examiner respectfully takes the position that (1) the claimed language fails to distinguish from the prior art of record, and (2) Brown clearly discloses on line 40-43 that the plates 5 are secured together by riveting, spot welding, or any other means, with the riveting and any other means are releasably securable fastening means.

10. In response to applicant's argument on page 8 that the term "reliably securable" must be read in light of specification, the examiner again respectfully takes the position that limitations in a claim are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Further, terms in a claim are to be interpreted in the broadest reasonable interpretation.

11. In response to applicant's argument on page 9 that Sanders teaches construction of pallets that can be nested one on top of the other, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HANH V. TRAN whose telephone number is (571)272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HVT
January 21, 2009

/Hanh V. Tran/
Primary Examiner, Art Unit 3637